

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ENDOTACH LLC

v.

COOK MEDICAL INCORPORATED

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CASE NO. 4:13-MC-0037
Judge Clark/Judge Mazzant

ORDER

Pending before the Court is Plaintiff Endotach LLC and Third Party Acacia Research Group LLC's Motion for Protective Order Regarding Defendant Cook Medical's Subpoena to Testify at a Deposition in a Civil Case and Request for 30(b)(6) Testimony of Acacia Research Group LLC (Dkt. #1). After considering the motion and the responses, the Court finds the motion is denied for the following reasons.

Defendant Cook Medical Incorporated argues that this Court does not have jurisdiction to consider this motion because it is not the "court for the district where compliance is required." The Court agrees. Under Federal Rule of Civil Procedure 45(a)(2),¹ a subpoena must issue from the court where the action is pending. In this case, the subpoenas issued from United States District Court for the Southern District of Indiana. Rule 45 goes on to say that a subpoena may command a person to attend a deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

¹ The Court notes that Federal Rule of Civil Procedure 45 was amended April 16, 2013, and became effective December 1, 2013.

Acacia is a non-party which has its principal place of business in Plano, Texas. The subpoena requires the 30(b)(6) deposition to occur in Fort Worth, Texas, and specifies that this is by agreement of the parties. Fort Worth is within 100 miles of Plano, Texas. Further, the parties agreed to conduct the deposition in Fort Worth. The Court sees no reason why the subpoena would be defective.

Thus, Rule 45(d)(3) provides that “the court for the district where compliance is required,” may quash or modify a subpoena if certain conditions are met. The subpoena in this case requires compliance in Fort Worth, Texas, which is located in the Northern District of Texas.

For this reason, the Court finds that Plaintiff Endotach LLC and Third Party Acacia Research Group LLC’s Motion for Protective Order Regarding Defendant Cook Medical’s Subpoena to Testify at a Deposition in a Civil Case and Request for 30(b)(6) Testimony of Acacia Research Group LLC (Dkt. #1) is **DENIED** without prejudice to refiling in the proper court.

SIGNED this 15th day of January, 2014.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE